

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

CORY A. SIMPSON,

Plaintiff,

v.

Case No. 2:10-cv-00953

OFFICER TONEY,

Defendant.

CORY ANTHONY SIMPSON,

Plaintiff,

v.

Case No. 2:10-cv-00958

MICHAEL D. MULLINS,

Defendant.

CORY SIMPSON,

Plaintiff,

v.

Case No. 2:10-cv-01044

PROSECUTOR MARK PLANTS,

Defendant.

PROPOSED FINDINGS AND RECOMMENDATION

These three civil actions are assigned to the Honorable John T. Copenhaver, Jr., United States District Judge, and they are referred to the undersigned Magistrate Judge for submission of

proposed findings and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

On November 19, 2010, Judge Copenhaver entered a Memorandum Opinion and Order (# 9) affirming the undersigned's previous Orders denying Plaintiff's Applications to Proceed Without Prepayment of Fees and Costs, and ordering Plaintiff to pay the \$350 filing fee in each civil action, on the basis that Plaintiff had, "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted" and that Plaintiff had not alleged that he was under "imminent danger of serious physical injury" in any of the pending Complaints. See 28 U.S.C. § 1915(g). Judge Copenhaver's Memorandum Opinion and Order directed Plaintiff to pay the \$350 filing fee for each case he wished to pursue, in full, by December 20, 2010. (# 9 at 6). The Memorandum Opinion and Order advised Plaintiff that the failure to pay the filing fee in full would result in a recommendation to the presiding District Judge that the affected civil action be dismissed. (Id.)

As of this date, Plaintiff has not paid the \$350 filing fee in any of the above-referenced cases. Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** each of the above-referenced civil actions for failure to pay the filing fee,

in full, as previously ordered by the court.

Pending in Case No. 2:10-cv-00953 is Plaintiff's Letter-form Motion for Copies of Incident Reports and Documents (# 5), and pending in Case No. 2:10-cv-00958 is Plaintiff's Letter-form Motion for Appointment of Counsel (# 5). In light of the recommended dismissal of each of these civil actions, it is further **RECOMMENDED** that the presiding District Judge **DENY** these motions as moot.

Plaintiff is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable John T. Copenhaver, Jr., United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and 72(b), Federal Rules of Civil Procedure, Plaintiff shall have fourteen days (filing of objections) and then three days (service/mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the district court and a waiver of appellate review by the circuit court of appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn,

474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on Judge Copenhaver.

The Clerk is directed to file this Proposed Findings and Recommendation in each of the above-referenced civil actions and to mail a copy of the same to Plaintiff.

January 4, 2011

Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge